IN THE HIGH COURT OF GUJARAT AT AHMEDABAD

SPECIAL CIVIL APPLICATION No 4539 of 2002

For Approval and Signature:

Hon'ble MR.JUSTICE C.K.BUCH

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1. Whether Reporters of Local Papers may be allowed to see the judgements? : YES

2. To be referred to the Reporter or not? : NO

3. Whether Their Lordships wish to see the fair copy of the judgement? : NO

4. Whether this case involves a substantial question of law as to the interpretation of the Constitution of India, 1950 of any Order made thereunder? : NO

5. Whether it is to be circulated to the Civil Judge? : NO

PARASHRAM @ PARSHIYO @ PARESH MANILAL KAHAR

Versus

STATE OF GUJARAT

Appearance:

MR HARESH JOSHI FOR M/S THAKKAR ASSOC. for Petitioner No. 1

MR HH PATEL, AGP for Respondent No. 1-3

CORAM : MR.JUSTICE C.K.BUCH

Date of decision: 02/07/2002

ORAL JUDGEMENT

1. Heard the learned counsel appearing for the petitioner-detenu Mr.Haresh N.Joshi for M/s. Thakkar Associates and the learned AGP Mr.HH Patel for the respondents.

2. The present petition is filed by the petitioner-detenu challenging the legality and validity of the order of detention passed by the Police Commissioner, Vadodara City on 20th February, 2002 in exercise of powers under Sub-section (2) of Section 3 of the Gujarat Prevention of Anti Social Activities Act, 1985 (hereinafter referred to as 'the PASA Act'). To brand the petitioner as a chronic bootlegger, the Detaining Authority has considered mainly three criminal cases registered in three different police stations under the Police Commissioner, Vadodara City for the offences punishable under Sections 66B, 65E, 81, 116B of the Bombay Prohibition Act. In all these three incidents the petitioner was allegedly found in possession of India-made foreign liquor. From the papers placed by the Sponsoring Authority the Police Commissioner recorded its subjective satisfaction that the petitioner is a 'dangerous person' being a chronic bootlegger and his activities would affect the public order and especially the public health, etc. The detenu is dealing in the whole-sale trade of the prohibited liquor and he enters into quarrels with the innocent people and/or public. The Detaining Authority has also placed reliance on three different statements recorded by the Sponsoring Authority for the incidents occurred on 9th December, 2001, 6th and 29th January, 2002 respectively.

3. The petitioner has assailed the order of detention on various grounds and the affidavit-in-reply filed by the Police Commissioner, Vadodara City tendered today by the learned AGP Mr.HH Patel is taken on record whereby the Detaining Authority has tried to explain the factual situation and has stated that he has correctly recorded to the subjective satisfaction.

4. The counsel appearing for the petitioner, in the course of his oral argument has firstly concentrated on the point that the subjective satisfaction recorded by the Detaining Authority is bad and illegal and the Authority was influenced by the earlier order of detention passed under the PASA Act by the then Commissioner of Police, Vadodara City in the year 1999. It is submitted that the petitioner was detained under the PASA Act on the grounds that he is a bootlegger and some preventive measures are required to be taken. This order of detention dated 6th August, 1999 was challenged before this Court by the petitioner and Special Civil Application No.6189/1999 ultimately was decided in favour of the petitioner. This Court, vide oral judgment dated 8th March, 2000 quashed the order of detention and the

petitioner was ordered to be set at liberty forthwith. The main grievance in the present petition is that the Detaining Authority has considered the earlier order of detention which has been quashed by issuing high prerogative writ. It is contended that the Detaining Authority could not have considered the earlier order of detention and the subsequent result including quashing of it. In support of this submission, the learned counsel has placed reliance on the judgment of the Supreme Court in the case of CHHAGAN BHAGWAN KAHAR v/s. N.L. KAHAR reported in AIR 1989 S.C. 1234 wherein in Paragraph 12 the Apex Court has observed that, "A fortiori when a detention order is quashed by the Court issuing a high prerogative writ like habeas corpus or certiorari the grounds of the said order should not be taken into consideration either as a whole or in part even alongwith the fresh grounds of detention for drawing the requisite subjective satisfaction to pass a fresh order. xxxxxx"

5. I agree that the petitioner was found involved in similar type of activities by the Detaining Authority. However, the act of considering the earlier order of detention while recording the subjective satisfaction has vitiated the legality and validity of the order of detention in view of the above observation. It is rightly argued that the subjective satisfaction recorded by the Detaining Authority is not wholly or solely based on the fresh material but the same is under the influence of one fact that the petitioner was earlier detained under PASA for similar activities. The subjective satisfaction has to be arrived at objectively and the shadow of the earlier event positively affects the objectivity. The order of detention which is challenged shall have to be turned down solely on this ground. Other grounds are not required to be discussed and therefore not discussed.

6. In view of the above discussion, the petition is allowed. The impugned order of detention dated 20th February, 2002 passed by the Police Commissioner, Vadodara City against the detenu Parashram @ Parshiyo Paresh Manilal Kahar is hereby quashed and set aside. The detenu is ordered to be set at liberty forthwith, if he is not required in any other matter. Rule is made absolute. Direct service is permitted.

(C.K. Buch, J.)